

Galen M. Gentry, SBN 308873
HUGHEY PHILLIPS, LLP
520 9th Street, Suite 230
Sacramento, California 95814
Telephone: 916.758.2100
Facsimile: 916.758.2200
ggentry@hugheyphillipsllp.com

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KAITLYN CUMBIE, an individual,

Plaintiff,

v.

MARK TIBBLES, an individual; MARK
TIBBLES ENTERPRISES, LLC, a California
limited liability company; TIBBLES PROPERTY
SOLUTIONS, LLC, a California limited liability
company; and DOES 1 through 10, inclusive,

Defendants.

Case No. 2:21-cv-01090-JAM-AC

**DECLARATION OF GALEN M. GENTRY
IN SUPPORT OF MOTION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANTS MARK TIBBLES, MARK
TIBBLES ENTERPRISES, LLC AND
TIBBLES PROPERTY SOLUTIONS, LLC**

Date: May 25, 2022

Time: 10:00 a.m.

Courtroom: 26

Action Filed: June 18, 2021

Trial Date: None

I, Galen M. Gentry, declare and state as follows:

1. I am an attorney at law duly authorized to practice before all courts in the State of California and am admitted to practice in the United States District Court for the Eastern District of California. I am an attorney at Hughey Phillips, LLP, counsel of record in this matter for Plaintiff Kaitlyn Cumbie ("Plaintiff"). The facts set forth herein are of my own personal knowledge, and, if called as a witness, I could and would testify competently thereto.

2. On June 18, 2021, Plaintiff filed a complaint [Docket No. 1].

1 3. On June 29, 2021, Plaintiff served the complaint and summons on Defendants Mark
2 Tibbles, Mark Tibbles Enterprises, LLC and Tibbles Property Solutions, LLC (“Defendants”) [Docket
3 Nos. 4-6].

4 4. Defendants’ initial deadline to file a responsive pleading was July 20, 2021.

5 5. Shortly after being served, Defendants, through their agent, Mark Tibbles, requested a
6 meeting to discuss settlement options.

7 6. The deadline to file a responsive pleading was extended, by mutual agreement, while the
8 parties explored possible global settlement.

9 7. On July 22, 2021, the parties participated in a settlement meeting and agreed on the
10 terms of a prospective settlement.

11 8. On September 1, 2021, I sent a draft settlement agreement to Mr. Tibbles. A true and
12 correct copy of my email to Mr. Tibbles (excluding the draft settlement agreement attached to such
13 email) is attached hereto as **Exhibit A**.

14 9. I did not hear from Defendants until October 4, 2021, when Mr. Tibbles informed me
15 that Defendants were no longer interested in settling and would instead retain counsel to file a
16 responsive pleading. A true and correct copy of Mr. Tibbles’ email is attached hereto as **Exhibit B**.

17 10. I informed Mr. Tibbles that Plaintiff would request entry of default if Defendants did not
18 file an answer by 5:00 p.m. on October 8, 2021, and Mr. Tibbles assured me that counsel for Defendants
19 would file an answer prior to October 8, 2021. See Exhibit B. I did not receive any communications
20 from Mr. Tibbles, any of the other Defendants or anyone acting on their behalf subsequent to the email
21 attached hereto as Exhibit B.

22 11. Defendants have failed and/or refused to file any responsive pleading to the complaint.

23 12. None of the Defendants is not a minor or an incompetent person.

24 13. To the best of my knowledges, none of the Defendants are currently involved in military
25 service of any kind, and therefore the Servicemembers Civil Relief Act does not apply.

26 14. On or around October 12, 2021, Plaintiff filed requests for default for Defendants
27 Tibbles, Tibbles Enterprises and Tibbles Property Solutions [Docket Nos. 7-9]. Default was entered by
28 the Court on or around October 13, 2021 [Docket No. 10].

EXHIBIT “A”



Mary Lao <mlao@hugheygentry.com>

Cumby v. Tibbles - Draft Settlement Agreement

Galen Gentry <ggentry@hugheyphillipsllp.com>
To: Mark Tibbles <shopsteward68@gmail.com>
Cc: Mary Lao <mlao@hugheyphillipsllp.com>

Wed, Sep 1, 2021 at 4:16 PM

Mark,

Attached for your review and comment, please find a draft settlement agreement that reflects the agreement-in-principle we reached back in July. There are several blanks to be filled in (if they remain applicable) and I'll also need your address to list in Section 13.

Please let me know if you have any comments or questions.

Best regards,

Galen

--

Galen M. Gentry
Principal



520 9th Street, Suite 230
Sacramento, CA 95814
O: (916) 758-2100, ext. 103
F: (916) 758-2200
www.hugheyphillipsllp.com

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Cumby - DRAFT Settlement Agreement v.2 .docx
30K

EXHIBIT “B”



Mary Lao <mlao@hugheyphillipsllp.com>

Cumby v. Tibbles - Draft Settlement Agreement

Galen Gentry <ggentry@hugheyphillipsllp.com>
 To: Mark Tibbles <shopsteward68@gmail.com>
 Cc: Mary Lao <mlao@hugheyphillipsllp.com>

Mon, Oct 4, 2021 at 8:34 PM

Mark,

Since you have now informed me that you are currently represented by counsel, I can no longer continue to communicate with you directly and I must instead communicate with your attorney. Please forward his or her contact information at your earliest convenience.

Best regards,

Galen

On Mon, Oct 4, 2021 at 8:28 PM Mark Tibbles <shopsteward68@gmail.com> wrote:

My counsel will have answers filed prior to oct 8th

On Mon, Oct 4, 2021 at 8:08 PM Galen Gentry <ggentry@hugheyphillipsllp.com> wrote:

Mark,

I can assure you that you will not save money by going to court to litigate. Nor will you escape liability to Ms. Cumby by filing for bankruptcy because your debts to her are not dischargeable under subsections (a)(2), (a)(4) and/or (a)(6) of Section 523 of the Bankruptcy Code. Any competent bankruptcy attorney will confirm that for you. And, for the record, I have no problem litigating these issues in bankruptcy court. I am, in fact, quite confident that your debt to Ms. Cumby will be determined non-dischargeable at the conclusion of any adversary proceeding to determine the dischargeability of such debts.

Neither you nor your companies are in bankruptcy yet and we currently have a federal case pending where your responsive pleadings are long overdue. Therefore, please be advised that we'll request that the Court enter defaults as to all defendants if you have not caused answers to be filed by 5:00 p.m. Friday, October 8th. We have no interest in waiting around any longer, so if you'd prefer to litigate - let's get it going.

Best regards,

Galen

On Mon, Oct 4, 2021 at 3:27 PM Mark Tibbles <shopsteward68@gmail.com> wrote:

I'm sorry but I decided I cannot sign this agreement and will be retaining counsel to go to court due to the hardship from the Caldor fire and some medical issues I will have to possibly file BK in the near future. Mark Tibbles

On Wed, Sep 29, 2021 at 11:21 AM Galen Gentry <ggentry@hugheyphillipsllp.com> wrote:

Mark,

Where do we stand on this? If I don't hear from you, I'll be left with no choice but to assume that you are no longer interested in settling with Ms. Cumby.

Best regards,

Galen

----- Forwarded message -----

From: **Galen Gentry** <ggentry@hugheyphillipsllp.com>

Date: Wed, Sep 1, 2021 at 4:16 PM

Subject: Case 2:21-cv-01090-JAM-AC Document 11-3
To: Mark Tibbles <shopsteward68@gmail.com>

Cc: Mary Lao <mlao@hugheyphillipsllp.com>

Mark,

Attached for your review and comment, please find a draft settlement agreement that reflects the agreement-in-principle we reached back in July. There are several blanks to be filled in (if they remain applicable) and I'll also need your address to list in Section 13.

Please let me know if you have any comments or questions.

Best regards,

Galen

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Principal



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